

MT LEGISLATIVE HISTORY

Chapter 77 19 74

Bill (H) 654 S _____ Original bill & hist. C

H. Committee on Labor and Employment Relations S. Committee on Labor and Employment Relations

Hearing Date(s) Jan 16 C

Hearing Date(s) Feb 11 C

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Did this bill originate in an interim committee? Yes No

Committee

Report

January 16, 1974

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

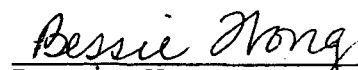
A meeting of the Labor and Employment Relations Committee was held Wednesday, January 16, 1974, at 10:30 a.m. in Room 428A with Chairman Pat McKittrick presiding. All members were present, except Reps. Baeth and Lombardi, who were excused.

Executive session on HOUSE BILL #654 -- Chairman McKittrick said questions concerning illness and re-employment have been raised on this bill. He said he talked to the labor department and asked if they would introduce a new bill on re-employment. Rep. Bennetts said she checked into the question of pregnancy, and will drop the issue at this point. Rep. Kimble suggested consideration of adding language into the bill that deals with scurrilous or frivolous cases where an employer may be compensated for his expenses. This would protect him from harrasement through suit. Rep. East moved that on page 5, line 12, after the word "misdemeanor" strike the comma and words following through line 14. Rep. Lee felt the language of the bill gives the employee action and protection, whereas by striking everything after "misdemeanor" would not. Chairman McKittrick said the insertion of language on civil damages does not add anything more than what is prescribed by general statutes now. Rep. East's motion failed. Those in favor were Reps. Bell, East, Ellerd, and Turner. Those opposed were Reps. Bennetts, Colberg, Flynn, Hodges, Kimble, Lee, Tierney, and Turman. Rep. Bell then moved that a sentence be added to line 14 on page 5: "Should the person who allegedly practiced discrimination in a civil action prevail, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination."; Rep. Flynn seconded. Rep. Lee felt the handicapped person would be back into the same position from a money standpoint with this amendment. Rep. Bell's motion carried with Reps. Bennetts, Hodges, Kimble, and Lee opposed. Rep. Lee moved that on page 5, line 3, the word "seeing-eye" be deleted and insert in lieu thereof "guide"; and that the comma after the word "seeing-eye" be deleted and the words "for the blind," be inserted in lieu thereof. Rep. Colberg seconded. Motion carried unanimously. Rep. Bell then moved that HOUSE BILL #654 DO PASS AS AMENDED; Rep. East was opposed.

Meeting was adjourned.



Pat McKittrick, Chairman



Bessie Wong, Secretary

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 11, 1974

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius on the above date in Room 402 of the State Capitol Building at 8:30 a.m.

ROLL CALL: All members of the committee were present with Senators Keenan and Bennett absent.

CONSIDERATION OF HOUSE BILL NO. 654: Representative Lynch appeared before the committee on this bill. This bill just prohibits discrimination against the physically handicapped.

Safety precautions were added in the House committee which is page 5, line 8 through 12. This bill will aid in many ways to eliminate the injustices that have occurred in the past.

Jim Murray of the AFL-CIO urges favorable consideration to House Bill 654.

J. . Carver, Administrator of Rehabilitative Services Division stated that every handicapped person wants the chance to produce and be a self-supporting citizen in the community. Urged the committee's support of HB 654.

Tony Softich of the Labor Standards Division urges support of HB 654. There have been many complaints to this division from handicapped persons. There are many places where these people could be utilized as long as they are not harmful to other employees. Mr. Softich included the slightly mentally retarded, however, Mr. Lynch said this bill does not include the mentally retarded, only the physically handicapped. This bill is drafted after the New Jersey statute.

CONSIDERATION OF HOUSE BILL 787: This bill would protect a person's right to privacy. Ms. Bradley explained the workings of a polygraph. These machines can be fouled up by a person trained in this art. An innocent person, because of emotions, could be labelled as a liar. Massachusetts was the first state to prohibit the use of polygraphs in 1949; 11 states have followed suit. The State Department abolished the use of lie detectors in 1952. There are two areas that are objected to in the use of lie detectors; scientific and civil rights.

Mr. Softich stated that his division had had complaints from persons being requested to take lie detector tests at the time of application for employment. There is nothing in the statutes to prohibit an employer from requiring a lie detector test. He felt this was the greatest invasion of a person's privacy. Urges support of this bill.

Ernie Post supported House Bill 787.

Senator Moore asked if this bill would include state government. Ms. Bradley stated that it was her intention that it would, however, Senator Moore stated that it was not so stated in the bill. Senator Lowe asked Ms. Bradley if she was concerned about the qualifications of the person applying for a position or the method by which these qualifications are disclosed. She answered that the method of disclosure was her main

concern but also the possibility of self incrimination.

Senator Bertsche stated that a lot of this information could be obtained by the employer checking with creditors and former employers without the lie detector test. The word "mechanical" should be inserted in the bill. Ms. Bradley had no objection to an amendment.

Senator Shea wondered why there was nothing in the newspapers if there has been complaints to the labor standards division. Mr. Softich stated that it is not the place of the division to publicize this and the division could be in a position for a libel suit if it did so.

CONSIDERATION OF HOUSE BILL 812: Representative Baeth appeared before the committee to explain that this bill is simply cleaning up the language in the bill. Senator Jensen stated that this is another ERA bill. It is just putting the husband in the same position as the wife is now.

CONSIDERATION OF HOUSE BILL 842: Karen Roberts of the Governor's office appeared in place of Mr. McKittrick who had to leave before the meeting came up for discussion. This bill would just clarify the appointment to the appeals board. The appointment must be confirmed by the Senate, one member must be a lawyer, the Governor designates the chairman, 3 members will serve concurrently with the Governor and the other 2 during the interim. There is only one personnel appeals board. This has nothing to do with workmen's compensation. That would be taken care of by the labor appeals board. This personnel appeals board would interpret the collective bargaining act. They are two entirely different boards.

DISPOSITION OF HOUSE BILL 842: Senator Bertsche moved that HB 842 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 812: Senator Jensen moved that HB 812 BE CONCURRED IN, seconded by Senator Bertsche. MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 787: Senator Bertsche moved that HB 787 be amended in the title of the bill on line 5 at the end of the line by inserting the word "MECHANICAL" and amend on page 1, line 15 by deleting the words "so-called" and inserting in lieu thereof the word "mechanical". Motion seconded by Senator Shea. MOTION CARRIED UNANIMOUSLY THAT THE AMENDMENTS BE ADOPTED. Senator Flynn moved that House Bill 787 AS SO AMENDED, BE CONCURRED IN, seconded by Senator Bertsche. MOTION CARRIED with Senators Jensen, Lowe, Moore and McNamer voting no.

DISPOSITION OF HOUSE BILL 654: Senator Bertsche moved that HB 654 BE CONCURRED IN, seconded by Senator Moore. MOTION CARRIED UNANIMOUSLY.

Meeting adjourned at 9:45 a.m.



GEORGE SIDERIUS, Chairman

ROLL CALL

LABOR & EMPLOYMENT COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date 2/11/77

NAME	PRESENT	ABSENT	EXCUSED
Jensen, Art	✓		
Bertsche, Bill	✓		
Flynn, Elmer	✓		
Keenan, P.J.			
Shea, Jimmy	✓		
Bennett, George			
Himsl, Matt	✓		
Lowe, Bill	✓		
Moore, Jim	✓		
McNamer, William	✓		
Siderius, George	✓		

Section 2. This act is effective on its passage and approval.

Approved March 4, 1974

CHAPTER NO. 76

AN ACT RELATING TO MOTION PICTURE THEATER EMPLOYEES AND OBSCENE MOTION PICTURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 94-8-110.3, R.C.M. 1947, which reads as follows:

94-8-110.3. **Certain motion picture theater employers not liable for prosecution.** (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed but does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under sections 94-8-110 and 94-8-110.1, R.C.M. 1947, or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

Approved March 4, 1974

CHAPTER NO. 77

AN ACT EXTENDING THE ANTIDISCRIMINATION STATUTES TO PROHIBIT DISCRIMINATION AGAINST THE PHYSICALLY HANDICAPPED; AMENDING SECTIONS 64-301 AND 64-302, R.C.M. 1947, AND PROVIDING A PENALTY AND A CIVIL REMEDY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 64-301, R.C.M. 1947, is amended to read as follows:

"64-301. **Freedom from discrimination as civil right — employment — public accommodations.** The right to be free from discrimination because of race, creed, color, sex, *physical handicap*, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

- (1) The right to obtain and hold employment without discrimination.
- (2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement."

Section 2. Section 64-302, R.C.M. 1947, is amended to read as follows:

"64-302. **Definition of terms.** Terms used in this act shall have the following definitions:

(1) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one (1) or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(2) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, sex, or color.

(3) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed, sex, or color, to be treated as not welcome, accepted, desired or solicited.

(4) "National origin" includes "ancestry."

(5) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and

public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

(6) *"Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device."*

Section 3. **Employment discrimination against handicapped prohibited.** It is unlawful to discriminate in the hiring or employment against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm. A person who practices discrimination in violation of this section commits a misdemeanor, and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

Approved March 4, 1974

CHAPTER NO. 78

AN ACT REVISING THE SANCTIONS FOR OPERATING A SCHOOL BUS IN VIOLATION OF THE TRANSPORTATION LAW OR POLICIES OF THE BOARD OF PUBLIC EDUCATION, AND AMENDING SECTION 75-7006, R.C.M. 1947; AND TO PROVIDE AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7006, R.C.M. 1947, is amended to read as follows:

"75-7006. **Penalty for violating law, board of education policies**